UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,434	12/31/2003	Stephen Lawrence	24207-10095	9581

62296 7590 02/28/2011
GOOGLE / FENWICK
SILICON VALLEY CENTER
801 CALIFORNIA ST.
MOUNTAIN VIEW, CA 94041

EXAMINER
KIM, PAUL

ART UNIT	PAPER NUMBER
2169	

NOTIFICATION DATE	DELIVERY MODE
02/28/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptoc@fenwick.com

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
_____

Ex parte STEPHEN LAWRENCE, OMAR KHAN, and NIKHIL BHATLA

_____

Appeal 2009-005597
Application 10/749,434
Technology Center 2100
_____

Before: JOSEPH L. DIXON, LANCE LEONARD BARRY, and
JAY P. LUCAS, *Administrative Patent Judges.*

BARRY, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

---

[1] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing,
as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE"
(paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery
mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

The Patent Examiner rejected claims 25, 54, and 62-105. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The Appellants' invention "sort[s] and rank[s] search results based at least in part on client-side behavior data associated with the ranked articles. This allows, for example, a client-side search engine to better evaluate which potential search results will be of most interest to a user." (Spec. ¶ 0007.)

ILLUSTRATIVE CLAIM

25.   A method comprising:

determining client-side behavior data associated with an article;

providing the client-side behavior data associated with the article to a ranking processor;

calculating a predetermined client behavior score for the article based at least in part on the client-side behavior data associated with the article;

storing the predetermined client behavior score in a data store, wherein the data store associates the predetermined client behavior score with the article;

receiving a search query;

determining that the article is associated with the search query;

> receiving from the data store the predetermined client
> behavior score associated with the article;

> arranging the article in a search result of the search query
> based at least in part on the predetermined client behavior score
> associated with the relevant article; and

> displaying at least a part of the search result to a user.

<center>REJECTIONS</center>

Claims 25, 26, 54, 55, 62, 63, 71, 80, 83, 84, 92, 101, 104, and 105 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Pub. No. 2002/0065802 A1 ("Uchiyama")

Claims 64-70, 72-79, 81, 82, 85-91, 93-100, 102, and 103 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Uchiyama and Officially noticed facts.

<center>ISSUE</center>

The *issue* before us is whether the Examiner erred in finding that Uchiyama computes a numeric score for an article based at least in part on client-side behavior data associated therewith as required by independent claims 25, 54, 104, and 105.

<center>FINDINGS OF FACT</center>

Uchiyama describes its invention as "a system of accumulating and organizing information collected from multiple remote locations in a central database, and implementing collected information in an open recommendation system." (¶ 0003.)

<center>3</center>

ANALYSIS

The Examiner construes the claimed "term, 'score', in its broadest reasonable interpretation, . . . simply . . . as grounds for a result." (Ans. 9.) "While Appellant[s] seem[] to constrain the meaning of score to a numerical value, the Examiner [opines] that said constraint is without merit as the Appellant[s] ha[ve] failed to recite such within the claims." (*Id.*)

"[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

Here, independent claims 25, 54, 104, and 105 recite in pertinent part the following limitations: "calculating a predetermined client behavior score for the article based at least in part on the client-side behavior data associated with the article." The Appellants' Specification describes the calculation of the score as follows.

> Following block 238 is block 240, in which a ranking score for the nth article is determined. In this block 240 in the embodiment shown, the ranking processor 138 receives the client-side behavior data from the client behavior data processor 136. The ranking processor 138 also receives the query signal 182. The ranking processor 138 determines a ranking score based at least in part on the client-side behavior data retrieved from the client behavior data processor 136 associated with the nth article. This may be accomplished, for example, by a ranking algorithm that weights the various client behavior data and other ranking factors associated with the query signal 182 to produce a ranking score. The different types of client behavior data may have different weights and these weights may be different for different applications. In addition to the client behavior data, the ranking processor 138 may utilize conventional methods for ranking articles according to

> the terms contained in the articles. It may further use
> information obtained from a server on a network, for example
> in the case of web pages, the ranking processor 138 may request
> a PageRank value for the web page from a server and
> additionally use that value to compute the ranking score.

(Spec. ¶ 0066) Giving the independent claims the broadest, reasonable construction consistent with the Specification, the limitations require computing a numeric score for an article based at least in part on client-side behavior data associated therewith.

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.,* 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

Here, based on the aforementioned claim interpretation, we agree with the Appellants that "Uchiyama fails to disclose calculating a predetermined client behavior score for an article based on client-side behavior data associated with the article." (Appeal Br. 8.) For its part, the reference explains that "recorded data may be accessed and utilized by the system to personalize each respective user's interactive experience, for example, through customized ranking of search results . . . ." (¶ 0073.)

It is uncontested that Uchiyama does not describe the recorded data as numeric scores. Furthermore, the Examiner has not shown that "grounds for a result" (Ans. 9) necessitate the computation of numeric scores. To the contrary, his aforementioned finding that the Appellants have failed to recite "within the claims" that the score is a numeric value (*id.*) implies an admission that the reference's grounds for a result is not a numeric value.

The absence of computing a numeric score for an article based at least in part on client-side behavior data associated therewith negates anticipation. Nor does the Examiner allege, let alone show, that the addition of officially noticed facts cures the aforementioned deficiency of the reference.

Therefore, we *conclude* that the Examiner erred in finding that Uchiyama computing a numeric score for an article based at least in part on client-side behavior data associated therewith as required by independent claims 25, 54, 104, and 105.

DECISION

We reverse the rejection of claims 25, 54, 104, and 105 and those of claims 62-103, which depend therefrom.

REVERSED

tkl

GOOGLE / FENWICK
SILICON VALLEY CENTER
801 CALIFORNIA ST.
MOUNTAIN VIEW, CA 94041